

REMARKS

Claims Have Been Canceled in Response to Examiner's Restriction Requirement

The Examiner has made final the requirement to elect for prosecution:

- Claims 1-13 and 19-20, drawn to a farinaceous-based food product and a meal kit, classified in class 426, subclass 557.
- Claims 14-18, drawn to a method of making a farinaceous-based food product, classified in class 426, subclass 496.

In response to the restriction requirement, Claim 17 had been previously canceled. Claims 14-16 and 18 are presently canceled, without prejudice to Applicants' right to file a divisional patent application directed to the restricted subject matter of claims 14-18.

Claim 20 had been previously amended to depend on claim 19, thereby rendering the claim objection moot.

The Present Invention

The present invention as set forth in the independent claims 1 is directed to a farinaceous-based food product comprising

- (a) about 1.0% to about 15.0% by weight of a protein additive;
- (b) about 0.25% to about 2.5% by weight of a hydrophobic ester; and
- (c) about 65.0% to about 95.0% by weight of a flour mixture with at least about 50.0% by weight of the flour mixture comprising gluten protein; and
- (d) about 4.0% to about 18.0% by weight water.

The food product is formulated and dried in a manner to give a cross-section by scanning electron microscopy that visually displays substantially no protein fiber gaps or voids at about 2000 times magnification. The farinaceous-based food product is firm and non-sticky after cooking.

Independent claim 1 is further limited by dependent claims which specify that the protein additive in the farinaceous based food product is dried or liquid egg white, dried or liquid whole egg, gliaden or a mixture thereof (claim 5); the hydrophobic ester has an HLB of under about 13 (claim 7); the hydrophobic ester is mono- or di-acylglyceride, sorbitan ester, sucrose ester, lecithin, or mixture thereof (claim 8); etc.

The Claims Are Not Anticipated under 35 USC 102

Claims 1, 5, 7-9, 11, and 13 were rejected under 35 U.S.C. 102 as anticipated by Ventres et al. (EP0350552). Wiley Encyclopedia of Food Science and Technology was cited as evidence for HLB value of claim 7.

Applicants respectfully traverse the novelty rejection. Applicants maintain that Ventres fails to disclose, among others, the following Claimed limitations:

- (1) at least about 50.0% by weight of the flour mixture comprising gluten protein;
- (2) about 1.0% to about 15.0% by weight of a protein additive with sufficient specificity to constitute anticipation.;
- (3) about 4.0% to about 18.0% by weight water in the product with sufficient specificity to constitute anticipation;
- (4) the farinaceous-based food product has a scanning electron microscopy image that visually displays substantially no protein fiber gaps or voids at about 2000 times magnification.

With reference to difference (1) at least about 50.0% by weight of the flour mixture comprising gluten protein, the Office Action refers to Applicants' Specification which discloses the limitation of at least about 50.0% by weight of the flour mixture comprising gluten protein. However, the Office Action has not identified a passage in Ventres that discloses a flour mixture with at least about 50.0% by weight of the flour mixture comprising gluten protein. Ventres at page 3, line 40 only refers to "glutinous flour." However, at line 47, Ventres states "There are different grades of semolina having different grades of glutinous properties." Nowhere does Ventres even make reference to a flour mixture with at least about 50.0% by weight of the flour mixture comprising gluten protein, nor that glutinous flour means one having at least about

50.0% by weight of the flour mixture comprising gluten protein, and there can be no anticipation due to the difference (1) as stated above.

With reference to difference (2), Ventres at Claim 14 on page 15 referred to in the Office Action fails to disclose about 1.0% to about 15.0% by weight of a protein additive with sufficient specificity to constitute anticipation. The present claim 1 specifies a protein additive, which would be in addition to any protein present in the flour. Ventres Claim 14 is a comprising claim that lists multiple ingredients. Claim 14 does not require added protein, so that its concentration may be 0 or less than 1.0%, or it can be more than 15.0 % such that the claim limitation of at least 75 % flour is still met. In light of Ventres failure of sufficiently specific disclosure of added protein, there can be no anticipation due to the difference (2) as stated above.

With reference to difference (3), the Office Action position notwithstanding, Ventres at p. 3, lines 10-12 (as well as p. 4 lines 3-11) fails to disclose about 4.0% to about 18.0% by weight water in the product with sufficient specificity to constitute anticipation. Moisture content at or below 28 % could mean 0 % moisture to less than 4 % moisture, and it could mean more than 18 % moisture, both of which are not what is presently claimed. The Office Action position notwithstanding, Example 9 discloses 21.2 % wt. Extrudate Moisture. See Table III, Item 9, column 4. This is outside the range specified in claim 1. Moreover, the calculation presented in the Office Action on page 4 does not take into account the moisture content in the 4000 g flour, which takes the total moisture content well beyond the 13.7 % which is based only on the 640 g added moisture. In light of Ventres failure of sufficiently specific disclosure of water in the product, there can be no anticipation due to the difference (3) as stated above.

With reference to difference (4), the farinaceous-based food product has a scanning electron microscopy image that visually displays substantially no protein fiber gaps or voids at about 2000 times magnification, the Office Action admits that it is not

specifically disclosed. Neither is there inherency. With reference to Claim 1, since all the same ingredients and process are not disclosed in Ventres as discussed above, the product does not necessarily have the same properties, and therefore there is no inherency. Ventres is aimed at reducing the drying requirements to achieve savings in energy and time. See abstract. In contrast, the process by which the present product is produced is aimed at achieving the electron microscopy parameter specified in claim 1, which is neither disclosed nor necessarily/inherently achieved by Ventres. As evidenced by Example 2 of the present Specification, the electron microscopy parameter is process dependent and Ventres uses a different process. Accordingly, there can be no inherency nor anticipation.

Claims 5, 7, 8, 9, 11 and 13 are not anticipated as dependent on claim 1 which is not anticipated as discussed above.

Applicants respectfully request that the anticipation rejections be reconsidered and withdrawn.

35 USC 103

Claims 19 and 20 were rejected under *35 USC 103 (a)* as unpatentable over Ventres as cited above in view of Oh et al. (US 6,217,918). As admitted in the Office Action, Ventres do not disclose:

- (5) a meal kit comprising farinaceous-based food product.

Claims 19 and 20, specifically directed to a meal kit, are novel and non-obvious as they depend on Claim 1 which is novel and non-obvious as discussed above.

Moreover, the electron microscopy parameter specified in claim 1 (difference 4 discussed above), which is neither disclosed nor necessarily/inherently achieved by Ventres, is not disclosed or predictable based on Oh et al.

With reference to difference (4), the claimed electron microscopy parameter, Oh et al. teach away from the present invention. Oh et al. dry freshly extruded pasta by toasting (i.e. using heated ambient air without added moisture). See Col. 2, lines 39-45. As discussed in the present Specification and comparative Example 2, this method is contrary to that of the present invention which dries pasta in the presence of moisture and which would not achieve the claimed electron microscopy parameter specified in claim 1. The method of Oh et al. confirms difference (4) which is the parameter claimed for the food product of claim 1 and its dependent claims.

The Office Action cites to Col. 4, lines 33-35 of Oh for disclosure of lecithin. However, this is not relevant to the farinaceous product of the present inventions as Oh et al. disclose lecithin for use in granular product, which is a sauce component in the packaged product of Oh et al. See Oh et al. at Col. 4, lines 13-45. Therefore, Ventres and Oh cannot be combined for showing the lecithin component. The fact that an

element of a claim (e.g. lecithin, pasta packaged in a container) is disclosed somewhere in the art is not sufficient to constitute a *prima facie* case of obviousness. The invention must be viewed as a whole. Viewed as a whole, the present claims are novel and non-obvious.

Even if Oh uses the same ingredients as Ventres, as suggested in the Office Action at page 6, Ventres does not disclose the presently claimed farinaceous-based food product (neither does Oh), as discussed above. Therefore, there is no obviousness over Ventres in view of Oh.

Accordingly, the claims are patentable and a Notice of Allowance is earnestly solicited.

In light of the above amendments and remarks, it is respectfully requested that the application be allowed to issue.

If a telephone conversation would be of assistance in advancing the prosecution of the present application, applicants' undersigned attorney invites the Examiner to telephone at the number provided.

Respectfully submitted,

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